

REMARKS/ARGUMENTS

This is meant to be a complete response to the Office Action mailed November 30, 2004. In the Office Action, the Examiner stated the specification had not been checked for the presence of all possible minor errors. The Applicant proof read the specification and did not find any significant typographical errors.

Also, in the Office Action, the Examiner objected to claims 26 because the "the second instant claim-26 should be labeled as "27" and requested Applicant to correct such claim. Applicant has made such correction.

Applicant's Response to the 35 U.S.C. § 102 Rejection of Claims 1-5, 9-12, 16-19, And 23-25 As Being Anticipated

By Gilbert (US 5,388,695)

In the Office Action, the Examiner rejected Applicant's claims 1-5, 9-12, 16-19, and 23-25 under 35 U.S.C. § 102 as being anticipated by Gilbert (US 5,388,695) 1995. In support of the rejection, the Examiner stated:

Regarding independent claim-1:

Gilbert teaches a brightly printed trapezoidal container (Title), and further teaches (Abstract) the container may also be specifically dimensioned to sheath a flower pot, (read as: a preformed pot cover sized and configured, as cited in the instant claim).

Gilbert further teaches providing a lower printed portion (read as: the preformed base having a decorative pattern, as cited) provided with a bright pattern, or images of bright leaves or flowers, or both,

provided by different colors of ink, or different thicknesses of the same ink (column-7, lines 41-49).

The teaching of Gilbert whereby different thicknesses of the same ink are utilized, is read as; two dimensional decorative pattern formed by at least one ink applied thereto so as to form highlighted and shaded areas which provide the decorative pattern with a visual perception of three dimensionality. The method of Gilbert is capable of the decorative rendering as cited in the instant claim.

Regarding **independent claim-9:**

The discussion above regarding claim-1 is relied upon. Gilbert teaches a generally frustoconical bag at least partially filled with a material such as soil which may have a live plant growing therein (Abstract), which is read as; a flower pot, as cited in the instant claim.

Regarding **independent claim-16:**

The discussion above regarding claim-9 is relied upon. A plant package as cited, is readable on the bag of Gilbert as discussed above in the rejection of claim-9.

Regarding **independent claim-23:**

The discussions above regarding the independent claims are relied upon.

Gilbert depicts in Figures 2 and 3, flower pot covers, having portions above the slitted features (33s) and (52) which are readable on a skirt portion as cited, and Figure-3 depicts decorative ornamentation thereon the skirt portion.

Regarding repeating dependent **claims 2, 10 and 17:**

The discussions above are relied upon. A skirt portion is evident and readable on the depictions of Gilbert (see the preceding discussion above).

Regarding repeating dependent **claims 4 and 25:**

The discussions above regarding the independent claims are relied upon.

The covers of Gilbert are capable of the disposition cited in the instant claims, and an ornamental skirt is discussed above in the rejection of independent claim-23.

Regarding repeating dependent **claims 5, 12, 19 and 24:**
The discussions above regarding the independent claims are relied upon.
Gilbert teaches a two panel construction (Abstract).

Applicant respectfully traverses the rejection based on the reasons stated hereinbelow.

The present invention as recited in claims 1-5 is directed to a preformed flower pot cover comprising a preformed base wherein the base is provided with a decorative pattern having shaded and highlighted areas whereby the shaded and highlighted areas provide the decorative pattern with a visual perception of three dimensionality.

Claims 9-12 recite a flower pot comprising a preformed base wherein the preformed base has a two dimensional decorative pattern on a least a portion thereof, the two dimensional decorative pattern formed by applying at least one ink to the outer peripheral surface of the preformed base whereby the decorative pattern is provided with shaded and highlighted areas which provide the decorative pattern with a visual perception of three dimensionality.

Claims 16-19 recite a plant package which includes, in addition to at least one item, a preformed base having a two dimensional decorative pattern on a least a portion thereof, the two dimensional decorative pattern formed by at least one ink applied to at least a portion of the outer peripheral surface of the preformed base so as to form shaded and highlighted areas which provide the

two dimensional decorative pattern with a visual perception of three dimensionality.

Claims 23-25, on the other hand, recite a flower pot cover disposable about a flower pot, the flower pot cover having a printed pattern thereon including shaded and highlighted areas which provide the printed pattern with a three dimensional appearance. The flower pot cover includes, in addition to a preformed base, a skirt connected to the upper end of the preformed base, the skirt having the printed pattern on at least a portion thereof wherein the printed pattern is formed by applying at least one ink to the skirt so as to provide the printed pattern with shaded and highlighted areas which provide the printed pattern with a visual perception of three dimensionalities.

Applicant respectfully submits that Gilbert (U.S. 5,388,695) does not anticipate the inventive concept recited in Applicant's above-referenced claims (as amended) within the meaning of 35 U.S.C. § 102 (b).

Each of Applicant's independent claims, namely claims 1,9,16, and 23, and each claim which depend therefrom, recite a preformed base element and/or a skirt element containing a two dimensional decorative pattern or printed pattern formed by the application of at least one ink to at least a portion of the specified element to form shaded and highlighted elements wherein the shaded and highlighted areas provide a visual perception of three dimensionality. Such is not taught, disclosed or even suggested by the Gilbert

reference. While it may be true that Gilbert discloses a flat trapezoidal container of brightly printed thermally sealable film, the container is made from two flat panels of heat sealable film, each of which is shaped as a trapezium or is formed from a single web folded double. The lower portion of the container is ornamentally imprinted along a border extending beneath a generally lateral line above the longitudinal axis of the web so as to identify the contents and simulate them in their optimum condition to enhance their marketability. A marker can be provided in the upper portion which quantifies the volume of the goods contained in the container or provides instructions for their use. When the cavity is distended by being partially filled, the entire container, except for a transition zone, presents a smoothly arcuate surface of the frustum of a cone. Further, the upper portion is permeable to visible light.

As set forth in column 4 of the Gilbert patent, one of the features of the invention is the printing of the entire lower portion of a web with high-gloss ink in juxtapositioned regions having different thicknesses, while restricting the printing beneath a generally lateral line of longitudinal demarcation between the printed lower portion and the transparent upper portion.

Therefore, it becomes clear from a teaching of Gilbert that, contrary to the Examiner's position, Gilbert does not use at least one ink to provide a decorative or printed pattern containing shaded and highlighted areas which provide the decorative pattern with a visual perception of three dimensionality

as recited in each of Applicant's claims. That is, Applicant teaches and claims the use of two dimensional decorative or printed pattern on at least a portion of specified elements, wherein the two dimensional decorative or printed pattern provides the desired shaded and highlighted areas which provide the decorative pattern or printed pattern with a visual perception of three dimensionality.

In short, Gilbert does not disclose, teach or even suggest providing a decorative pattern or printed pattern from at least one ink wherein such decorative pattern or printed pattern has shaded and highlighted areas which provide such patterns with the visual perception of three dimensionality, let alone the use of providing a two dimensional decorative or printed pattern which is capable of providing the visual perception of three dimensionality as recited in each of Applicant's claims.

As to the rejection of the various dependent claims, it is respectfully submitted that Gilbert does not anticipate such claims within the meaning of 35 U.S.C. § 102 (b) for the reasons set forth above. For the sake of brevity, the Applicant's reasoning concerning same will not be repeated herein but are expressly incorporated by reference. Further, each of the dependent claims contain each and every limitation of their respective base claims, as well as the limitations set forth in the rejected dependent claim, and any intervening claim; and there is no teaching or even suggestion in Gilbert of the use of a two

dimensional decorative or printed pattern which contains shaded and highlighted areas so as to produce a visual perception of three dimensionality as recited in each of Applicant's independent claims, as well as their respective dependent claims. Therefore, it is respectfully submitted that the Examiner's rejection of claims 1-5, 9-12, 16-19, 23-25 (as amended) under 35 U.S.C. § 102 as being anticipated by Gilbert is in error and should be withdrawn. Such is respectfully requested.

Applicant's Response to the 35 U.S.C. § 103 Rejection of
Claims 6-8, 13-15, 20-22, And 26-27 Over Gilbert
(US 5,388,695) In View Of Weder (US 5,029,412)

In the Office Action, the Examiner rejected Applicant's claims 6-8, 13-15, 20-22, and 26-27 under 35 U.S.C. § 103 over Gilbert (US 5,388,695) 1995 in view of Weder (US 5,029,412) 1991. In support of the rejection, the Examiner stated:

Regarding dependent **claims 6, 13, 20 and 26:**

The discussions above regarding the independent claims are relied upon.

Gilbert is silent as to a plurality of overlapping folds in the base portion as cited. Weder '412 teaches a flower pot a flower pot with a pleated base and skirt (Title), and elaborates on the formation of a decorative pattern as printed, embossed or otherwise disposed on the outer surface of the pot or cover (column-3, lines 53-66).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have substituted the pleated over of Weder '412 for the unpleated trapezoidal cover of Gilbert, as further such modification is merely an alternate equivalent decorative and skirted covering means performing the same

intended function of disposing a pot or floral grouping into a decorative wrapper for aesthetic appeal.

Regarding dependent **claims 7, 14, 21 and 27:**

The discussions above regarding the independent claims are relied upon.

Gilbert as modified by Weder provides for partially bonded overlapping folds as cited, (see Weder '412, claim-1).

Regarding dependent **claims 8, 15 and 22:**

The discussions above regarding the independent claims and the preceding claims rejection are relied upon.

Gilbert as modified by Weder (see Figures) provides for randomly positioned and connected folds as cited, the cover of Gilbert as modified is also capable of being flattened and unflattened as cited in the instant claims.

Applicant respectfully traverses the Examiner's rejection of claims 6-8, 13-15, 20-22, 26-27 under 35 U.S.C. § 103 (a) for the following reasons.

As previously stated, it is respectfully submitted that Gilbert does not disclose, teach or even suggest the preformed flower pot cover of claim 1, and thus claims 6-8 which depend therefrom, or the flower pot as recited in claim 9, and thus claims 13-15 which depend therefrom, or a plant package as recited in claim 16, and thus claims 20-22 which depend therefrom, or a flower pot cover disposable about a flower pot as recited in independent claim 23, and thus claims 26-27 which depend therefrom. The Examiner has recognized the deficiencies of Gilbert and attempted to supply such deficiencies with selected teachings of Weder (U.S. 5,029,412). While it may be true that Weder '412 discloses a flower pot or flower pot cover having a base and a skirt connected to an upper end of the base, it is respectfully submitted that Weder '412 does

not supply the deficiencies of Gilbert. In Weder the base includes a plurality of overlapping folds for providing structural integrity to the flower pot or flower pot cover; and the skirt includes a plurality of folds which are not connected to provide an overall pleated appearance. Portions of the folds in the skirt are connected and portions of the folds in the skirt are unconnected. Further, a portion of the folds in the base are connected whereas remaining portions can remain unconnected.

While it may be true that the Weder '412 patent discloses that a decorative pattern is formed or printed or embossed or otherwise disposed on or incorporated into the outer peripheral surface of the flower pot or flower pot cover 10, there is no teaching or even suggestion of utilizing a two dimensional decorative or printed pattern formed by applying at least one ink on at least a portion of a preformed base and/or a skirt to provide shaded and highlighted areas so as to provide the decorative or printed pattern with a visual perception of three dimensionality. As set forth above, Applicant's position is that Gilbert does not disclose such concepts, and that Weder '412 does not supply the deficiencies of the Gilbert reference.

Therefore, it is respectfully requested that the Examiner withdraw his rejection of claims 6-8, 13-15, 20-22, and 26-27 under 35 U.S.C. § 103 (a) as unpatentable over Gilbert in view of Weder '412 and pass such claims to issue.

Applicant's Response to the Double Patenting Rejection of Claims 1-27

In the Office Action dated November 20, 2004, the Examiner rejected Applicant's claims 1-27 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 6 of U.S. Patent No. 6,574,918 in view of U.S. Patent No. 5,029,412. The before stated rejection is believed obviated by the filing of a terminal disclaimer on the primary reference, namely U.S. Patent No. 6,574,918.

The Examiner also rejected Applicant's claims 1-27 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 4-6 of U.S. Patent No. 6,269,590.

In addition, the Examiner rejected Applicant's claims 1-27 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,295,761. In each instance the Examiner stated that although the conflicting claims were not identical, they were not patentable distinct from each other because claims 1-27 of the subject application are encompassed by conflicting claims of the above-referenced patent.

It is respectfully submitted that the Examiner's obviousness-type double patenting rejections of claims 1-27 under the judicially created doctrine of obviousness-type double patenting as same relates to U.S. Patent No.

6,269,590 and 6,295,761 are moot in light of the terminal disclaimer which was filed on April 16, 2004, and which has been accepted and recorded. It should be noted that in the terminal disclaimer filed on April 16, 2004 each of the above-referenced U.S. Patent Nos. 6,269,590 and 6,295,761 were two of the patents recited in the terminal disclaimer.

Submitted herewith is a terminal disclaimer disclaiming the terminal portion of any patent granted on the application which would extend beyond the expiration date of U.S. Patent No. 6,574,918. Also submitted is a certificate showing that the '918 patent is commonly owned with the subject application.

Therefore, it is respectfully requested that the Examiner withdraw the rejection of claims 1-27 under the judicially created doctrine of obviousness-type double patenting as same relates to U.S. Patent Nos. 6,269,590, 6,295,761, and 6,574,918, and pass such claims to issue.

CONCLUSION

This is meant to be a complete response to the Office Action mailed November 30, 2004. Applicant respectfully submits that each and every rejection of the claims, as now pending, has been overcome, and that such claims are now in a condition for allowance. Favorable action is respectfully solicited.

Should the Examiner have any questions regarding this Amendment, or the remarks contained herein, Applicant's agent would welcome the opportunity to discuss such matters with the Examiner.

Respectfully submitted,



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